IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.1722 OF 2004
DATE OF DECISION: 23-08-2007

Tarsem Chand

.....APPELLANT

VERSUS

Ujjagar Singh

.....RESPONDENT

CORAM:- **HON'BLE MR.JUSTICE HEMANT GUPTA**

PRESENT: Mr. Amandeep Agnihotri, Advocate
for the appellant.

Mr. Avinash Mittal, Advocate
for the respondent.

HEMANT GUPTA, J.(Oral)

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for possession in respect of land measuring 7 biswas was decreed. The plaintiff purchased the land from its previous owner vide registered sale deed dated 17-6-1994 for a consideration of Rs.19000/-. It is the case of the plaintiff that he was put in possession of the suit land to his vendors but subsequently, the defendant has taken forcible possession on 10-10-1995 and, thereafter, the present suit for possession was filed on 28-08-1996.

The defendant-appellant has asserted that he is in possession of the suit land from the time immemorial as owner. The defendant also asserted that his possession is continuous, open and hostile and that he has become owner by way of adverse possession. Both the Courts below have found that the plaintiff is owner of the suit land having

purchased the same from the previous owner vide registered sale deed dated 17-06-1994. It is also found that the defendant has not led any evidence regarding his plea of adverse possession, therefore, the plea of adverse possession covered by issue No.4 was decided against the defendant.

Learned counsel for the appellant in the second appeal vehemently argued that the plaintiff has admitted in his statement that at the time of sale in favour of the plaintiff, the defendant was in possession and, therefore, the story propounded by the plaintiff is not believable. It is also argued that mere sale in favour of the plaintiff on 17-06-1994 will not enable the plaintiff to claim possession on the basis of title from the said date as the defendant is in possession of the suit land in his own right even before the land was sold in favour of the plaintiff.

I do not find any substance in the argument of the learned counsel for the appellant. It is admitted during the course of argument by the learned counsel for the appellant that in fact the land was allotted during consolidation to the vendors of the plaintiff. Since the plaintiff has claimed possession on the basis of title, therefore, the plaintiff is entitled to possession even if, he is not able to prove that the possession was delivered to the plaintiff at the time of execution of the sale deed on 17-06-1994. For claiming possession on the basis of title, there is no limitation prescribed. It is only for the defendant, who has asserted adverse possession to prove his hostile possession for a period of 12 years before the date of filing of the suit for possession. There is no evidence led by the learned counsel for the appellant in respect of his plea of adverse possession. Therefore, the plaintiff as a owner is entitled to possession.

Therefore, the findings recorded by the Courts

below that the plaintiff is entitled for the suit land on the basis of title cannot said to be suffer from any patent illegality or irregularity, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

August 23, 2007
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